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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

V.

03 CR 1197 (SHS)

UZAIR PARACHA,

Defendant.

New York, N.Y.
November 20, 2018
2:30 p.m.

Before:

HON. SIDNEY H. STEIN,

District Judge

APPEARANCES

GEOFFREY S. BERMAN

Interim United States Attorney for the
Southern District of New York

KARL N. METZNER

ELIZABETH HAFNT

Assistant United States Attorneys

JOSHUA L. DRATEL

Attorney for Defendant

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1 (Case called)

2 MR. METZNER: Carl Metzner and Elizabeth Hanft for the
3 government.

4 Good afternoon, your Honor

5 THE COURT: Good afternoon.

6 MR. DRATEL: Good afternoon, your Honor. Joshua
7 Dratel for Mr. Paracha, standing beside me.

8 THE COURT: Good afternoon. You may be seated in the
9 courtroom.

10 MR. DRATEL: The spectators are all family members of
11 Mr. Paracha and another attorney.

12 THE COURT: I'm sorry?

13 MR. DRATEL: The spectators are family members, and
14 an attorney. There is also an attorney here as well. I am
15 identifying for the court's benefit.

16 THE COURT: Thank you.

17 I realize that everyone is here in support of
18 Mr. Paracha, I take it in support of the bail application.

19 We had this conference scheduled, and then subsequent
20 to the scheduling of that, Mr. Dratel made a bail application,
21 which, as we discussed when you indicated to the court will
22 that you were intending to do that, I said that was rather
23 unusual given the nature of the charges.

24 I have read your materials. I have read the
25 government's materials. When I say the materials, I mean the

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1 submissions that each of you made; Mr. Dratel's letter dated
2 November 9 and the government's memorandum is document 139
3 filed on November 19.

4 It is your application, Mr. Dratel. Again, I've read
5 the materials. What would you like to say?

6 MR. DRATEL: Only, your Honor, that I think the
7 unusual nature of this case and the time frame of this case,
8 the arc of this case from the beginning puts it in a very
9 different posture than a typical case, and the presumption
10 has been met, has been satisfied.

11 In terms of the rebuttal presumption, I think that
12 probably the most unusual part of this case is that, given the
13 15-year sentence that Mr. Paracha has already served and given
14 that the concept of risk of flight in this situation and even
15 danger to the community, it is almost a non sequitur in the
16 sense that, given the court's remarks at the prior conferences,
17 it would be conceivable if this case could be resolved and he
18 would be out anyway. You know what I mean?

19 THE COURT: As I have indicated, that is not for me.
20 The parties have to do that, and nobody has told me anything
21 about what, if anything, is happening in that regard.

22 MR. DRATEL: I understand.

23 What I'm saying is that the additional imprisonment
24 of Mr. Paracha, under whatever resolution of the case seems
25 gratuitous at this point, is not achieving anything and that he

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1 is a prime candidate for bail, given the family support, given
2 all the sureties. These aren't even sureties, they are other
3 family members. The sureties couldn't make it today. This
4 isn't necessarily the sureties. That is the family support
5 that could be in court today.

6 Given all those circumstances, I think this is an
7 appropriate and compelling application.

8 THE COURT: Well, my concern is, one, that there is
9 the presumption. I do recognize that it is rebuttal, but it is
10 a statutory presumption.

11 The concern is also, the first of the factors that are
12 listed under 3142(g), that is, the nature and circumstances of
13 the offense charged, which everyone agrees are serious charges.
14 He is not a citizen, so there is always that risk of flight. I
15 think there are substantial sureties in place and, obviously,
16 he has the support of a number of people, as reflected not only
17 by those who are here, but also in the attachments to your
18 submission. The nature and circumstances of the offense
19 charged, I think, is serious. It has to be dealt with.

20 Mr. Metzner, what would you like to say?

21 MR. METZNER: Your Honor, I think we made our position
22 clear in the papers. Unless the court has questions, we will
23 rely on the arguments we made in the submission.

24 THE COURT: I think given the existence of the
25 rebuttal presumption and my consideration of all of the factors

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1 in 3142(g), I am going to find that there is no conditions or
2 combination of conditions that -- let me get the statutory
3 language -- no condition or combination of conditions that will
4 reasonably assure the safety of the community or the presence
5 of the defendant, reasonably assure the appearance of the
6 defendant and the safety of the community.

7 I am finding there is no such conditions and I am
8 denying the application for bail at this time.

9 I do see that a schedule has been set by the
10 Second Circuit. The government brief is due September 24.
11 Defendant's brief, March 25. Reply brief, April 4. No
12 argument date has been set.

13 Are the parties continuing to attempt to resolve this
14 at this level?

15 MR. METZNER: Your Honor, literally from the 5th of
16 July, which was the first business day after your Honor's
17 opinion, the government has made clear that it is open to
18 conversations with Mr. Paracha through Mr. Dratel.

19 We have reiterated that on multiple occasions, and in
20 the now nearly five months that has past, we are awaiting the
21 defendant's response.

22 THE COURT: Mr. Dratel, I am handicapped because I
23 can't involve myself in these, but that is surprising to hear,
24 given the fact, as you have said, that the defendant has been
25 incarcerated for 15 years already and has been, according to

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1 the papers -- and I have no reason to doubt it -- a model
2 prisoner throughout that time.

3 MR. DRATEL: Yes.

4 All I would contest with respect to Mr. Metzner's
5 remark is that we are waiting for a spot. We have had
6 discussions, we have had some response, but we have not made
7 progress that would bring us to the court for a resolution.

8 We will keep that in mind and look for opportunities.

9 THE COURT: What is the path to resolve it, again,
10 without the involvement of the court, if you feel free to --

11 MR. DRATEL: I would just say, for want of a better
12 explanation, for us to be creative and use our imaginations in
13 ways that both parties could be satisfied.

14 THE COURT: Well, do it.

15 MR. DRATEL: Thank you, your Honor. I appreciate
16 that. Believe me.

17 THE COURT: We don't have another conference set.
18 Lets set another conference so that we keep this moving
19 forward.

20 When do the parties want to come back to the court?

21 MR. DRATEL: I think after New Year's. I have a trial
22 beginning a couple weeks that will take most of December
23 anyways. The government will be working on its brief. Maybe
24 after New Year's.

25 THE COURT: It would make more sense to be able to

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1 resolve this before additional time and effort by the parties.

2 MR. DRATEL: My trial should be done by the --

3 THE COURT: No, but you need time with Mr. Metzner.

4 It's been since July and sounds like not much progress has been
5 made. Presumably you need more than a couple weeks. If you
6 don't think that is true, I am perfectly prepared to move now.

7 MR. DRATEL: Whatever the court thinks is a good time
8 frame. We will keep trying in between.

9 THE COURT: There has to be enough time for progress
10 to be made, substantial progress to be made. I'm not privy to
11 those discussions.

12 Should we set it for the end of January?

13 MR. DRATEL: Sure.

14 Your Honor, the week of the 22nd -- the 29th is
15 actually better.

16 THE COURT: The parties can come back to me and
17 request a conference at any time. I would encourage them to
18 do so.

19 January 30, 3:30, for status conference.

20 Thank you.

21 MR. METZNER: Your Honor, may I?

22 THE COURT: I'm sorry. Yes.

23 MR. METZNER: Out of an abundance of caution, could I
24 request exclusion to the speed trial clock, to the extent it is
25 running, to January 30 of next year?

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1 MR. DRATEL: No objection.

2 THE COURT: So your application is, if it is running,
3 you want an exclusion?

4 MR. METZNER: Yes, please, Judge.

5 THE COURT: The government, having moved for an
6 execution of time until January 30, I hereby grant it, and no
7 objection having been stated by the defense, I exclude time
8 from today until January 30 pursuant to 18 U.S.C.

9 3161(h)(7)(A), and I do make the finding that the ends of
10 justice outweigh the interest of the public and the defendant
11 in a speedy trial. It is to enable the parties to attempt to
12 resolve this matter in the light of my decision granting a
13 new trial.

14 Thank you.

15 MR. METZNER: Thank you, your Honor.

16 MR. DRATEL: Thank you.

17 (Adjourned)

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